

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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:
UNITED STATES OF AMERICA, : Criminal Action No.:
: 1:18-cr-123
:
versus :
:
ELMER ZELAYA MARTINEZ, :
RONALD HERRERA CONTRERAS, : May 4, 2022
HENRY ZELAYA MARTINEZ, :
PABLO MIGUEL VELASCO BARRERA, : Volume 1 of 30
DUGLAS RAMIREZ FERRERA, :
:
Defendants. :
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TRANSCRIPT OF JURY PRETRIAL MOTIONS
BEFORE THE HONORABLE ROSSIE D. ALSTON, JR.
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G

(Court proceedings commenced at 1:07 p.m.)

THE DEPUTY CLERK: Criminal No. 2018-cr-123. United States of America versus Elmer Zelaya Martinez, Ronald Herrera Contreras, Henry Zelaya Martinez, Pablo Miguel Velasco Barrera, Douglas Ramirez Ferrera.

Will the interpreter please raise your right hand to be sworn?

(Interpreter sworn.)

THE INTERPRETER: I do. Gloria McFadden.

THE COURT: Would counsel please note your appearances for the record?

MR. TWIST: My client can't hear right now.

MR. KING: My client can't hear.

(A pause in the proceedings.)

THE INTERPRETER: Your Honor, a few minutes ago it was working, but it is not working at this time.

(A pause in the proceedings.)

(Interpreter sworn.)

THE COURT: Counsel, if you could -- again, we're waiting for the new equipment. If you can ask your clients not to do anything with the devices once they get them because, from what I understand, they work and then suddenly when I come in they don't work. So somebody is doing something with them. So let's try to work it out.

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1 (A pause in the proceedings.)

2 THE COURT: I'm going to ask the interpreter to ask
3 if you can hear.

4 If you can hear, please raise your hand.

5 (All defendants raised their hands.)

6 THE COURT: Let the record reflect that all four of
7 the defendants requiring assistance from the interpreter are
8 now able to hear the interpreter as she's repositioned herself
9 in the courtroom. Again, gentlemen, if you cannot hear at any
10 time, simply raise your hand or nudge your lawyer and we will
11 do what we can to accommodate you.

12 Can everyone hear me?

13 Very good. All right. The interpreter has been
14 sworn, correct?

15 THE DEPUTY CLERK: Yes.

16 THE COURT: All right. Counsel, if you could
17 identify yourselves for the record, please.

18 MS. BELLOWS: Good afternoon, Your Honor. Rebecca
19 Bellows, Alexander Blanchard, Cristina Stam and Jacqueline
20 Bechara.

21 THE COURT: Very good. Welcome back, Ms. Stam.

22 MS. STAM: Thank you, Your Honor.

23 THE COURT: Congratulations.

24 MR. STAMBAUGH: Good morning, Your Honor. Greg
25 Stambaugh for Ronald Herrera Contreras.

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1 MR. LEIVA: Good afternoon, Your Honor. Manuel
2 Leiva on behalf of Mr. Elmer Zelaya Martinez.

3 THE COURT: Thank you, sir. Good afternoon.

4 MR. VANGELLOW: Good afternoon, Your Honor. Paul
5 Vangellow and Andrew Stewart on behalf of Pablo Barrera.

6 THE COURT: Good afternoon.

7 MR. TWIST: Good afternoon, Your Honor. Russell
8 Twist and David Kiyonaga for Mr. Zelaya Martinez.

9 THE COURT: Good afternoon, sir.

10 MS. RHODES: Good afternoon, Your Honor. Laura
11 Rhodes on behalf of Mr. Douglas Ramirez Ferrera.

12 THE COURT: Good afternoon, ma'am.

13 These matters -- and I'm going to speak slowly for
14 the benefit of the interpreter. These matters come on this
15 afternoon for consideration of several issues. We have issues
16 regarding motions and then we have issues regarding review of
17 the venire.

18 What I'm going to do, Counsel, is I'm going to go
19 over these motions in a particular order. And then once we
20 finish the motions, we'll then move to the excusal process,
21 and then we should be able to complete our work for the day.

22 The first one we'll take up -- and I apologize if
23 they don't go in an order that you would prefer, but it's
24 basically the way it was presented to me -- Pablo Miguel
25 Velasco Barrera. The second --

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1 MR. VANGELLOW: I'm sorry, Your Honor, apparently
2 they are not hearing again. I apologize.

3 (A pause in the proceedings.)

4 MR. VANGELLOW: I'm wearing hearing aids, which are
5 electronically controlled by my phone. I'm going to turn them
6 off to see if that makes a difference.

7 THE COURT: Anything you can try, sir, we're willing
8 to do.

9 Anyone else have any devices they want to turn off
10 in the meantime?

11 Okay. Gentlemen, if you can hear now, please raise
12 your hands.

13 (A pause in the proceedings.)

14 THE COURT: I'm going to --

15 MS. RHODES: In the last trial I did with the same
16 type of diversion, we had a set of maybe five of this part of
17 the device available, and during almost every day of the trial
18 somebodies would just go out and we would have to get a new
19 one -- another one, and then they weren't broken. Just
20 somehow they would just stop.

21 THE COURT: They're not making it 30 seconds today,
22 though, before something is wrong.

23 MS. RHODES: So I'm just saying maybe have several
24 backups that might help.

25 (A pause in the proceedings.)

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1 THE COURT: Ma'am, if you stop --

2 THE INTERPRETER: I was going to ask for another
3 mic.

4 THE COURT: Okay. Gentlemen, if you can hear what
5 the interpreter is saying, please raise your hands.

6 MR. VANGELLOW: Your Honor, apparently not on behalf
7 of Mr. Barrera.

8 THE COURT: All right. Let's try this. Let's go
9 old school. Before we had these fancy devices, we just had an
10 interpreter who would stand close enough so that the
11 defendants could hear her speak without the benefit of these
12 devices.

13 Ma'am, are you comfortable removing your mask?

14 THE INTERPRETER: Yes, Your Honor.

15 THE COURT: You're comfortable removing your mask?

16 THE INTERPRETER: Yes.

17 THE COURT: Ma'am, if you could simply say,
18 "Gentleman can you hear me?" in Spanish. Let's see if we can
19 arrange it that way.

20 (Interpreter complied.)

21 THE INTERPRETER: The response was "yes" from them,
22 Your Honor.

23 THE COURT: Thank you, ma'am. What we're going to
24 do today is we're going to try to make it easier for you. And
25 I apologize that I'm looking around the screen, but we're

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1 going to go what I say "old school" and we're just going to
2 have you interpret as we go. We'll all try to speak at a pace
3 that you can keep up and that way the defendants can have the
4 opportunity of hearing your translation.

5 THE INTERPRETER: Very well, Your Honor.

6 THE COURT: Counsel, if you could, again, identify
7 yourselves for the record in case that was not acknowledged.

8 MS. BELLOWS: Yes, Your Honor. Rebecca Bellows,
9 Alexander Blanchard, Cristina Stam, and Jacqueline Bechara for
10 the United States.

11 THE INTERPRETER: Repeat the last name, please.

12 MS. BELLOWS: Bechara.

13 MR. STAMBAUGH: Good afternoon, Your Honor. Greg
14 Stambaugh for Ronald Herrera Contreras.

15 MR. LEIVA: Good afternoon, again, Your Honor.
16 Manuel Leiva on behalf of Elmer Zelaya Martinez.

17 MR. VANGELLOW: Paul Vangellow and Andrew Stewart on
18 behalf of Pablo Barrera.

19 MR. TWIST: Russell Twist and David Kiyonaga on
20 behalf of Henry Zelaya Martinez.

21 THE INTERPRETER: The interpreter did not hear the
22 name and request repetition.

23 THE COURT: Could you state it, again, Mr. Twist,
24 who you represent.

25 THE INTERPRETER: The second name.

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1 THE COURT: David Kiyonaga.

2 THE INTERPRETER: Thank you.

3 THE COURT: The names are right beside the
4 defendant's name. If you could look right beside the
5 defendant's name, you can find the name of the lawyers.

6 THE INTERPRETER: Yes, of course. Thank you, Your
7 Honor.

8 MS. RHODES: Laura Kelsey Rhodes on behalf of
9 Mr. Douglas Ramirez Ferrera.

10 Just for the record, my co-counsel, Mr. Easley, had
11 to have a medical appointment and he expects to be here
12 shortly.

13 THE COURT: Yes.

14 Okay. Counsel, what I'm going to do is first go
15 through the motions. First, we'll take up Pablo Miguel
16 Velasco Barrera. The second motion to strike the government's
17 expert designation.

18 You can argue from there, sir.

19 MR. VANGELLOW: Your Honor, Paul Vangellow on behalf
20 of Mr. Barrera. I'm prepared to submit on the papers that I
21 had presented to the Court. I don't have anything more to add
22 to that unless you have anything that you would like me to
23 address in particular.

24 THE COURT: I appreciate that, Counsel.

25 Ms. Bellows.

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1 MR. BLANCHARD: Your Honor, very briefly. Gang
2 experts have been permitted to testify in numerous MS-13 cases
3 in this court and throughout this circuit and the Fourth
4 Circuit has blessed that practice many times. We cited some
5 of those opinions in our position paper. The salient concern
6 expressed by Mr. Velasco Barrera is that the gang expert will
7 be nearly a conduit for testimonial hearsay that he heard over
8 the course of his years of investigating MS-13.

9 (Interpretation.)

10 MR. BLANCHARD: I'd like to make just two points on
11 that front, Your Honor. The first is that a lot of what the
12 gang expert will rely on is non-testimonial hearsay.

13 (Interpretation.)

14 MR. BLANCHARD: And the second point is that,
15 whereas will be the case here, the expert is not directly
16 incorporating specific testimonial hearsay statements into his
17 testimony, the Fourth Circuit has said very clearly there's no
18 Crawford problem.

19 (Interpretation.)

20 MR. BLANCHARD: Thank you, Your Honor.

21 THE COURT: For the reasons outlined in the papers
22 filed by the government, and assuming the government provides
23 the appropriate foundation for the expert to testify, the
24 Court is going to deny Pablo Velasco Barrera's second motion
25 to strike the government's expert designation.

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1 Next.

2 (Interpretation.)

3 THE COURT: Next is Elmer Zelaya Martinez motion to
4 exclude government's MS-13 expert witness. Mr. Leiva.

5 (Interpretation.)

6 MR. LEIVA: May it please the Court. Your Honor, I
7 won't go through all the evidentiary rules that are noted in
8 our motion. And I really want to get to the heart of the
9 issue of the government's use of a gang expert.

10 THE COURT: Just a second.

11 (Interpretation.)

12 MR. LEIVA: The issues for the Court to consider is
13 whether or not the testimony of this gang expert is beyond the
14 layperson's understanding and whether a jury would not have
15 difficulty understanding some of the concepts that the
16 government is going to introduce about --

17 (Interpretation.)

18 MR. LEIVA: The government is going to have numerous
19 cooperating witnesses, Your Honor, both racketeering witnesses
20 and coconspirators.

21 (Interpretation.)

22 MR. LEIVA: All who are self-identified MS-13
23 members.

24 (Interpretation.)

25 MR. LEIVA: So then the question is: What does an

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1 expert have to add to the testimony if the cooperating
2 witnesses will not do themselves when they are put up on
3 direct by the government?

4 (Interpretation.)

5 MR. LEIVA: The cooperators are usually in a
6 position to talk about what the rules of the gang are, the
7 symbols of the gain, the terminology of the gang.

8 (Interpretation.)

9 MR. LEIVA: The concern that we have, Your Honor,
10 other than what we've raised in our pleading is, of course,
11 that the government is going to use this expert to bolster the
12 testimony of the cooperating codefendants and the racketeering
13 witnesses.

14 THE COURT: One question. And, again, I don't know
15 generally -- specifically what the government's theory of the
16 case is, and I don't know specifically what your theory of the
17 case is. But isn't it quite possible -- and I don't know what
18 they're going to offer these witnesses for. I'm assuming,
19 based upon my experience, that they are going to offer them --
20 with regard to information relating to the allegations in the
21 indictment, what happened on the day in question. I don't
22 know if they're going to offer them for the purpose that the
23 alleged gang expert is going to offer them for.

24 (Interpretation.)

25 MR. LEIVA: My experience has been, Your Honor, is

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1 that the government will elicit that information from the
2 racketeering witnesses and some of the coconspirators.

3 (Interpretation.)

4 MR. LEIVA: The government will ask them the
5 hierarchy of MS-13, the colors worn by MS-13, what the rules
6 are of the MS-13.

7 (Interpretation.)

8 THE COURT: But under traditional circumstances,
9 isn't your side and the government entitled to corroborate
10 information that is provided by a witness if it gets to be
11 multiple or duplicative or something like that that's a
12 different inquiry. But aren't you allowed in the context of
13 litigation to corroborate the testimony of someone whose
14 credibility might be questioned?

15 (Interpretation.)

16 MR. LEIVA: Yes, Your Honor. In this case, the
17 government from my count is going to have at least six
18 witnesses who are MS-13 members who are going to be
19 testifying.

20 (Interpretation.)

21 MR. LEIVA: And this MS-13 expert, unlike other
22 expert, which testified more scientific information or
23 technical information. Basically, what this expert is going
24 to say is, "I interviewed MS-13 members, I've watched MS-13
25 members, this is -- this is how I gathered my information."

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1 (Interpretation.)

2 MR. LEIVA: So there's nothing technical or
3 scientific about his testimony.

4 (Interpretation.)

5 MR. LEIVA: And if I could give the Court a very
6 simple example of how the government used these experts and
7 whether they really help the jurors understand.

8 (Interpretation.)

9 MR. LEIVA: For example, they will ask the experts
10 whether one of the rules of MS-13 is whether members of MS-13
11 can cooperate with law enforcement.

12 (Interpretation.)

13 MR. LEIVA: I don't think it's far-fetched for me to
14 present to the Court that I don't know of any criminal
15 enterprise or people that are involved in criminal activity
16 that don't frown upon their coconspirators, codefendants
17 cooperating with the police.

18 (Interpretation.)

19 MR. LEIVA: So does a jury really need someone to
20 come in as an expert to say that people involved in criminal
21 activity frown upon those that are involved with them to
22 cooperate with law enforcement. That's something that I think
23 is not outside the realm of a layperson's knowledge. It is
24 something that a juror can understand and comprehend.

25 (Interpretation.)

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1 MR. LEIVA: And also, a jury, I think, Your Honor,
2 will be able to comprehend that certain criminal organizations
3 or gangs, they have their symbols, they wear certain clothing,
4 they have certain colors that they wear. So this --

5 (Interpretation.)

6 MR. LEIVA: So this expert can't add to anything as
7 far as helping the members of the jury or Your Honor
8 understanding MS-13.

9 (Interpretation.)

10 MR. LEIVA: But a second concern we also have, Your
11 Honor, is that Sergeant Guzman, as far as I can tell, has not
12 investigated any of the MS-13 cliques here in this area.

13 (Interpretation.)

14 THE COURT: But doesn't that --

15 (Interpretation.)

16 THE COURT: Doesn't that go to his ability to
17 qualify as an expert witness rather than a motion to exclude
18 him at this point? In other words, if the government fails to
19 ask the appropriate questions and fails to get the appropriate
20 answers, doesn't that resolve your inquiry rather than a
21 motion in limine?

22 (Interpretation.)

23 MR. LEIVA: It could, Your Honor, which is why I
24 requested a hearing. I can tell the Court that up until about
25 a month ago, the government relayed to us that they were going

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1 to rely on a local detective who's testified numerous times in
2 this courthouse as far as the gang activity in this area.
3 They then chose to go a different route and are bringing in
4 somebody in from Houston, and that expert designation that we
5 were sent or an additional expert designation that we were
6 sent via email --

7 (Interpretation.)

8 THE COURT: And you would agree that conducting a
9 Daubert hearing is within the discretion of the Court?

10 MR. LEIVA: Correct, Your Honor.

11 THE INTERPRETER: May I request repetition?

12 THE COURT: A Daubert hearing. D-a-u-b-e-r-t.

13 (Interpretation.)

14 THE COURT: And that the expert witness doesn't need
15 the reliability or credibility standard based upon the inquiry
16 that would be made as you're conducting your voir dire of that
17 witness, then it would be within the discretion of the Court
18 to preclude that testimony.

19 (Interpretation.)

20 MR. LEIVA: That is correct, Your Honor. If I could
21 read just this one passage that the government provided as
22 part of a supplementation to this expert designation.

23 They wrote and I quote: "MS cliques, while
24 generally following the same rules and regulations, often have
25 additional unique rules or regulations."

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1 (Interpretation.)

2 MR. LEIVA: So, Your Honor, of course, the concern
3 is -- well, let me step back.

4 I think there's, at times, a misunderstanding of
5 MS-13. MS-13 is more of an "umbrella," let's say for lack of
6 a better term, organization. But within that umbrella, there
7 are cliques. And the cliques, as the -- as the government has
8 conceded here, often have unique rules or regulations. Which
9 is why, in most of the cases I've been involved in, there's
10 been a local law enforcement officer who's qualified as an
11 MS-13 expert.

12 (Interpretation.)

13 THE COURT: Which, based upon your own standard or
14 statement of the law, you provide a foundational basis for
15 providing good questions to the proposed expert during voir
16 dire.

17 (Interpretation.)

18 MR. LEIVA: Yes, Your Honor. But, again, when the
19 government puts someone up as an expert, and in this case it
20 is our contention that they would do so to provide some
21 semblance of reliability to the five or six admitted MS-13
22 members who are going to be testifying. So, in other words,
23 being used purely to bolster their testimony, not to provide
24 the jury with information that they otherwise wouldn't be able
25 to understand or comprehend. This is not complicated stuff.

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1 (Interpretation.)

2 MR. LEIVA: So in closing, Your Honor, I think the
3 question the Court needs to ask: What is the expert going to
4 add to the case that the cooperators are not going to be able
5 to provide or to provide to the Court or to the jury? And
6 what is it about the testimony that the government believes an
7 expert can provide that the jury needs assistance with or that
8 a juror won't be able to understand without an expert?

9 (Interpretation.)

10 MR. LEIVA: Thank you, Your Honor.

11 THE COURT: The Court relying on Rule 702 of the
12 Federal Rules of Evidence, which requires the Court to assess
13 the reliability of expert testimony based on scientific,
14 technical, or other specialized knowledge before admitting the
15 alleged or proffered expert to testify governs the standard
16 that the Court will use to assess whether or not the
17 information provided by the expert who meets the standard of
18 Rule 702 and will deny the motion in limine, obviously, with
19 leave for counsel to raise the objection in the context of the
20 proffered expert and when that expert proposes to testify.

21 MR. LEIVA: Thank you, sir.

22 THE COURT: Yes.

23 (Interpretation.)

24 THE COURT: Thank you.

25 The next motion on the Court's docket is the

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1 government's motion in limine to preclude references to the
2 penalties the defendant is facing if convicted.

3 (Interpretation.)

4 MR. BLANCHARD: Your Honor, this is a fairly
5 standard motion based on longstanding Supreme Court and Fourth
6 Circuit precedent. And at least, thus far, I don't believe
7 any of the defendants have lodged an objection. Just to be
8 clear what we're asking for, we're asking for the attorneys to
9 be barred from -- I'm sorry.

10 (Interpretation.)

11 THE COURT: Mr. Blanchard, I know this is difficult,
12 but people like me and Mr. Stambaugh, who are older, realized
13 this is a trip down memory lane. This is the way we used to
14 do it all the time.

15 MR. BLANCHARD: I'll try to remember, Your Honor.

16 (Interpretation.)

17 MR. BLANCHARD: So we're asking for the Court to
18 preclude defense counsel from referring to the potential
19 penalties that the defendants face if they're convicted.

20 (Interpretation.)

21 MR. BLANCHARD: And similarly, if any of the
22 defendants are to testify in their own defense, we would ask
23 the Court to preclude them from referring to any penalties
24 that they might face if the jury were to convict them.

25 (Interpretation.)

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1 MR. BLANCHARD: Thank you.

2 MS. RHODES: Your Honor, can I respond?

3 THE COURT: You can stand there if you'd like.

4 MS. RHODES: So this issue, I believe -- correct --
5 this issue arose out of the discussion in an email we were
6 having with the government.

7 THE COURT: Just a moment.

8 (Interpretation.)

9 MS. RHODES: So I'm reviewing what the government's
10 motion says and I think that it's essentially barking up the
11 wrong tree.

12 (Interpretation.)

13 MS. RHODES: So, it refers to the defendant's
14 sentencing exposure and says it's irrelevant. And we don't --

15 (Interpretation.)

16 MS. RHODES: We don't dispute that.

17 (Interpretation.)

18 THE COURT: Let me ask a simple question and it sort
19 of put it in context for me.

20 Whenever I consider the term "relevance" --

21 (Interpretation.)

22 THE COURT: -- I ask myself, what does it intend to
23 prove or disprove?

24 (Interpretation.)

25 THE COURT: And in the context of this case, what

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1 does any sentencing, which the jury has no involvement in --

2 (Interpretation.)

3 THE COURT: -- intend to prove or disprove anything
4 about the case?

5 (Interpretation.)

6 MS. RHODES: The issue that we had been discussing
7 is whether the defense can cross-examine a cooperating witness
8 about whether they were facing the death penalty at the time
9 they negotiated a deal or began to negotiate the deal, whether
10 or not it was still in effect against them or possibly at the
11 time they signed the plea agreement.

12 (Interpretation.)

13 THE COURT: That's a different question than the one
14 regarding reference to sentencing.

15 (Interpretation.)

16 MS. RHODES: So what our conversation had been on
17 email was about defense counsel's use of the fact that a
18 witness was facing the death penalty at the time they began
19 cooperation. And our position is that at that stage is quite
20 relevant to their willingness to come in and what motivation
21 it provides.

22 (Interpretation.)

23 THE COURT: That's an entirely different question in
24 kind from the question that's provided the format for the
25 Court's consideration. Whether you can ask that question or

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1 not seems to me to be something, based upon the stage we're at
2 right now, the Court is going to have to resolve in the
3 context of the trial.

4 (Interpretation.)

5 MS. RHODES: Very well. I do want to add one other
6 aspect to this, though. In a previous trial last fall that
7 went on for several months with Judge Bredar in Baltimore,
8 this issue arose.

9 (Interpretation.)

10 MS. RHODES: And Judge Bredar allowed the defense to
11 inquire of cooperators who had been in -- in the -- a point in
12 negotiations that I described, as long as the defense agreed
13 that the instruction could be given that none of the
14 defendants were then facing the death penalty.

15 (Interpretation.)

16 THE COURT: But, again, I've read the case
17 specifically that you're speaking about, but my concern is
18 that if we get into that too extensively it could cause the
19 jury to be confused. Because at one point, Mr. Zelaya
20 Martinez was indeed facing capital punishment and the jury
21 doesn't need to get caught up in that because, as I understand
22 it now, all of the defendants currently before the Court are
23 similarly situated and those circumstances differentiate them
24 from each other.

25 (Interpretation.)

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1 MS. RHODES: The Court is obviously correct. But
2 not all are in the same situation, but it would be the
3 cooperators' position that we'll be asking about.

4 (Interpretation.)

5 THE COURT: Well, my inclination, at this stage,
6 accepting the fact that this sort of changes the analysis of
7 what the motion was all about, is I am going to preclude any
8 references to any sentencing aspects regarding any of the
9 defendants or any of the witnesses. However, I will allow, to
10 the extent appropriate, appropriate cross-examination on what
11 benefits people might have gotten for their testimony, which
12 is recognized even by the government as appropriate
13 cross-examination or inquiry.

14 (Interpretation.)

15 MS. RHODES: Very well. And does that mean, for
16 example, we could ask a question about your -- the time you're
17 facing now has been substantially reduced.

18 THE COURT: I don't know what the answers to those
19 questions might be. And I'm not going to allow lay witnesses
20 or anybody, expert witnesses for that matter, to testify to
21 the extent of the application of any Rule 35. That's just
22 going to provide additional confusion for the fact finder.
23 Those things are traditionally recognized by case law, left
24 within the pure discretion of the trial court.

25 MS. RHODES: Very well.

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1 (Interpretation.)

2 THE COURT: Thank you, Counsel.

3 Mr. Leiva I see you getting up and down over there.

4 MR. LEIVA: Yes, Your Honor. I'll go after
5 Mr. Blanchard. Your Honor, I think we may have the same
6 concerns.

7 (Interpretation.)

8 MR. BLANCHARD: So, Your Honor, this goes to a point
9 you made with Ms. Rhodes. The one and only footnote in our
10 motion explicitly says, "The government does not seek to
11 preclude questions posed to cooperating witnesses regarding
12 the sentences they receive."

13 (Interpretation.)

14 THE COURT: And correct me if I'm wrong, please.
15 Each one of those defendants, this Court sentenced, correct?
16 Except maybe one.

17 (Interpretation.)

18 MR. BLANCHARD: This Court but not Your Honor,
19 necessarily.

20 THE COURT: Yes, sir.

21 (Interpretation.)

22 MR. BLANCHARD: But that remains our position and
23 the motion is really just about references to the defendant's
24 sentencing exposure.

25 THE COURT: Yeah, okay.

1 (Interpretation.)

2 THE COURT: The Court concurs.

3 Mr. Leiva.

4 MR. LEIVA: Yes, Your Honor. Well, I just caught
5 the last part. You said, "The court concurs."

6 My concern was that Ms. Rhodes was not answering the
7 question that you posed to her and that wasn't the motion that
8 was before the Court by the commonwealth. She went somewhere
9 else with that, Your Honor.

10 THE COURT: And I agree she went beyond the context
11 of the motion, but I gave her some latitude on that, and I'll
12 hear from you on that.

13 THE INTERPRETER: May the interpreter render between
14 each person, Your Honor? Otherwise, the --

15 THE COURT: That's fine. Yes, ma'am.

16 THE INTERPRETER: Perfect. The defendants will know
17 who's speaking.

18 (Interpretation.)

19 MR. LEIVA: So, yes, Your Honor, the government is
20 correct that most courts agree that it is not relevant what
21 possible sentence our clients may receive, and that was their
22 motion not to preclude us from cross-examining any cooperating
23 codefendants or even racketeering witnesses on what they
24 received -- what sentence they received, or what sentence they
25 may have received.

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1 So Ms. Rhodes brought that issue before the Court
2 when it was never in play by the government, Your Honor. So I
3 just want to be clear that that is not what they're seeking,
4 and I concur with them in that footnote that that is still
5 fair game for us.

6 THE COURT: I think the record is clean.

7 (Interpretation.)

8 THE COURT: Thank you.

9 The last -- or the next motion is the government's
10 motion in limine to prevent victim witness attendance --
11 victim witness to attend the trial in its entirety.

12 (Interpretation.)

13 THE COURT: And, Mr. Blanchard, when you make your
14 argument before the Court, if you could provide some degree of
15 limitation as to who qualifies as a victim witness.

16 (Interpretation.)

17 MR. BLANCHARD: So here, Your Honor, we're talking
18 about direct relations: Parents, siblings, people who are
19 related to the victims.

20 (Interpretation.)

21 MR. BLANCHARD: And under the exception carved out
22 in Rule 615(d), we believe that these victims' family members,
23 who have essentially stepped into the place of the victims who
24 are deceased, have a right under the Crime Victims' Right Act
25 to be present throughout the duration of the trial if they so

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1 choose.

2 (Interpretation.)

3 THE COURT: I'm assuming, Mr. Blanchard, and again
4 correct me if I'm wrong on this, that these particular
5 individuals who fit into the category of victim witnesses that
6 you talked about, are not going to be what I will term
7 "traditional fact witnesses." They're just going to be
8 individuals who are going to talk about the individuals who
9 are the alleged victims of the circumstances?

10 (Interpretation.)

11 MR. BLANCHARD: I think that's generally right, Your
12 Honor, but I'm not sure that that applies with respect to some
13 of the testimony that we expect they'll provide.

14 (Interpretation.)

15 MR. BLANCHARD: Which relates to the date on which
16 they disappeared and the circumstances surrounding when they
17 were last seen.

18 (Interpretation.)

19 MR. BLANCHARD: As to those events, I think they are
20 fact witnesses.

21 (Interpretation.)

22 MR. BLANCHARD: Thank you, Your Honor.

23 MS. RHODES: May I be heard? I would just ask that
24 these people that we're talking about, the victim witnesses,
25 not be allowed to listen to opening statements since they'll

1 be testifying.

2 (Interpretation.)

3 MR. BLANCHARD: Your Honor, the government does not
4 agree with that. Under the Crime Victims' Rights Act they
5 have a right to be here throughout the entirety of the
6 proceedings and Courts have held that even can include voir
7 dire.

8 (Interpretation.)

9 THE COURT: The purpose of the rule on witnesses,
10 which is the act that have been used to describe the
11 circumstances we're talking about --

12 (Interpretation.)

13 THE COURT: -- is to preclude witnesses from
14 tailoring their testimony to what they hear in court.

15 (Interpretation.)

16 THE COURT: And so, if they're able to hear opening
17 statements and/or hear the testimony of other individuals,
18 there is the distinct possibility, not saying it's going to
19 necessarily happen, that their testimony could indeed be
20 tailored to -- to be inconsistent with the government's theory
21 of the case.

22 (Interpretation.)

23 MR. BLANCHARD: Two points, Your Honor. Your
24 concerns are certainly valid. However, first, the CVRA trumps
25 the rule on witnesses Courts have held. So that's the first

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1 point. The second point is that -- well, let me hold on.

2 (Interpretation.)

3 MR. BLANCHARD: The second point is that based on
4 the nature of the testimony that these victim witnesses will
5 be providing and where they are likely to testify in the order
6 of witnesses, we do not think that their testimony is of the
7 sort that is susceptible, whether they're listening to other
8 witnesses or opening statements to being changed or conformed.
9 As I mentioned, they're testifying to very narrow facts
10 regarding dates and such.

11 (Interpretation.)

12 MR. BLANCHARD: So while their testimony is
13 important this case doesn't rise and fall on their testimony.
14 And so, any potential prejudice to the defendants is, the
15 government would submit, nonexistent but certainly not
16 material.

17 (Interpretation.)

18 THE COURT: I don't think that necessarily the Crime
19 Victims' Rights Act necessarily trumps the Sixth Amendment,
20 which is the issue that's raised in the context on the rule of
21 witnesses.

22 Who is going to do the opening statement?

23 MR. BLANCHARD: I am, Your Honor.

24 (Interpretation.)

25 THE COURT: What I'm going to ask is that you

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1 fashion your opening statement, that it not provide the degree
2 of particularity that is going to make reference to the
3 individuals who are going to be sitting in the courtroom. I
4 think you understand what I'm saying.

5 In other words, I don't want you to say Ms. Jones is
6 going to testify X, Y, Z; Mr. Smith is going to testify 1, 2,
7 3 as opposed to a witness who is likely to testify to the
8 following.

9 MR. BLANCHARD: I understand, Your Honor.

10 (Interpretation.)

11 THE COURT: Ma'am, would you like a break or a drink
12 of water or something?

13 THE INTERPRETER: Some water would be nice, Your
14 Honor.

15 THE COURT: Okay. We're not going to leave the
16 courtroom, but we're going to let you have a little bit of a
17 break. You've been working hard, so we'll have you take a
18 little break.

19 (A pause in the proceedings.)

20 MR. VANGELLOW: Your Honor, I'm sorry, if I may.

21 THE COURT: Yes, sir.

22 MR. VANGELLOW: Given the fact that Mr. Blanchard's
23 opening statement has come into play here, if you will, he has
24 proposed a very expansive PowerPoint presentation in his
25 opening statement with videos, pictures, so on and so forth,

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1 and it may affect how you decide to rule on what he can and
2 cannot do in his opening statement, even though it was
3 addressed for a different issue.

4 So I don't know if it's appropriate to bring it up
5 at this point in time or as part of the -- and this was also
6 brought up in exchanges of emails amongst counsel for the
7 government and for the defense with regard to how far he could
8 go in his opening statement. Several of us have objected to
9 what he proposes to do. But, again, to the extent that it
10 would affect what you've just considered, it might be
11 appropriate to bring it up now, with all due respect.

12 THE COURT: Suffice it to say, Mr. Blanchard has --
13 I'm sorry.

14 (Interpretation.)

15 THE COURT: Suffice it to say that Mr. Blanchard has
16 been before this particular Court many times and I think he's
17 very adept at understanding what the significance of what he
18 can and cannot do and understood clearly what the Court said
19 when it proposed its resolution for the issue before the
20 Court.

21 MR. VANGELLOW: Very well, Your Honor.

22 (Interpretation.)

23 THE COURT: Very good. There was something that I
24 saw coming through the court regarding the use of production
25 tapes and the like and the use of them in opening statements.

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1 Did something like that come up?

2 (Interpretation.)

3 MR. BLANCHARD: Yes, Your Honor. We filed a motion
4 in limine in light of objections that were conveyed via email
5 by defense counsel yesterday and today.

6 (Interpretation.)

7 MR. BLANCHARD: And, Your Honor, the motion relates
8 to the government's request to be able to use a PowerPoint
9 presentation during its opening statement and for that slide
10 deck to include some of the exhibits that have been marked and
11 provided to defense counsel and the government expects to
12 tender at trial.

13 (Interpretation.)

14 MR. BLANCHARD: This is not an uncommon practice for
15 the government, and as we put in our motion, we have a good
16 faith basis to believe that all of the evidence that's cited
17 or shown in the PowerPoint presentation is admissible and will
18 be admitted when it's formally offered during the trial.

19 (Interpretation.)

20 THE COURT: And for purposes of anticipating some of
21 the concerns that the other side may have, the Court will note
22 that in its instruction the Court will specifically say that
23 opening statements and closing arguments are not evidence.

24 So does that alleviate some of your concern, sir?

25 (Interpretation.)

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1 MR. TWIST: May I be heard?

2 THE COURT: Yes, sir.

3 MR. TWIST: Russell Twist, Your Honor.

4 Reading from the government's pleading, page 2, "The
5 government's opening statement should be, quote, an objective
6 summary of evidence.'" And it --

7 THE COURT: You can stay standing there. She needs
8 to catch up with you. You can stand. She just needs to catch
9 up with you.

10 (Interpretation.)

11 MR. TWIST: And the citation for that is *Frazier v.*
12 *Cupp*, 394 U.S. 731, 736, 1969. And I would --

13 THE COURT: Let her speak the cite --

14 (Interpretation.)

15 MR. TWIST: So I would suggest that it's one thing
16 to say, "there will be photographs," and another to show
17 photographs at this point. Because at this point in the trial
18 it's only to orient the jurors or the Court. It's totally a
19 road map of where their prosecution expects it will try to go.
20 But if they start putting in pictures and recordings and
21 things like that, those are not summaries. Those are the
22 evidence that they intend to use. So we would object to that,
23 Judge.

24 (Interpretation.)

25 THE COURT: But, Counsel, isn't the rule that in

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1 opening statement all counsel are entitled to suggest evidence
2 that they believe they would have a good faith basis for
3 believing that they would be admissible?

4 (Interpretation.)

5 MR. TWIST: Your Honor, yes, but -- and the but is
6 the Supreme Court's decision in *Cupp*. The government can
7 summarize their evidence, but the Court is very clear an
8 objective summary of evidence. There's a difference between
9 saying you will hear from witnesses who will say without --
10 well, pictures of evidence. Now, you'll be able to see a
11 picture of A, B, C. That's a summary. But what's different
12 is, here is a picture. For one thing, were we to have an
13 objection, then we're objecting to evidence in an opening
14 statement, which really is disruptive, and lawyers try not to
15 interrupt the evidence of lawyers, so.

16 (Interpretation.)

17 MR. TWIST: So, for example, as I understand it,
18 that would look like a closing statement, and if there's no
19 distinction between a closing statement and an opening
20 argument, I don't think that meets the Supreme Court standard.

21 (Interpretation.)

22 THE COURT: I was always taught that in the context
23 of presentation of evidence, its opening statement, and that
24 is what you believe the evidence will be, and closing argument
25 is what you believe the evidence was. And a lot of times

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1 there's a disconnect between the presentation of the evidence
2 and what was promised in opening statement. And good lawyers
3 make the point of suggesting to the jury that the government
4 promised something they didn't deliver.

5 (Interpretation.)

6 MR. TWIST: Your Honor, yes. But, Judge, it's one
7 thing to say, "I suggest that you will see photos that will
8 show" and it's something else to say, "here is a photo, here
9 is a recording." That's not a summary. That's the evidence.
10 So it's one thing to say, "here is what you will see," and
11 something else that say, "here it is."

12 (Interpretation.)

13 THE COURT: Thank you.

14 MR. BLANCHARD: So the defense wants us to say to
15 the jury "this is what you'll see, but we're not going to show
16 any of it to you now."

17 (Interpretation.)

18 MR. BLANCHARD: The purpose of the opening statement
19 is to preview the evidence that the government expects will be
20 introduced and that will go towards the defendant's guilt for
21 the jury's benefit.

22 And in the course of previewing the evidence in this
23 case the government simply wishes to use audio-visual aids to
24 allow the jury to better understand the road map, so to speak.

25 (Interpretation.)

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1 MR. BLANCHARD: Two other points, Your Honor.
2 First, as Your Honor rightly pointed out, the jury will be
3 instructed that nothing I say during my opening statement will
4 be evidence.

5 (Interpretation.)

6 MR. BLANCHARD: And the second point is that what
7 the government intends to do here is summarize the evidence.
8 As Your Honor knows from the exhibit list that we submitted,
9 which runs to 30 pages, there is an enormous amount of
10 evidence that we plan to offer in this case.

11 THE INTERPRETER: The interpreter requests
12 repetition of the number of pages.

13 MR. BLANCHARD: 30.

14 (Interpretation.)

15 MR. BLANCHARD: Of this --

16 THE COURT: Let me interrupt. And I'm assuming that
17 there's not going to be an effort of publishing anything to
18 the jury during opening statements.

19 (Interpretation.)

20 MR. BLANCHARD: Well, maybe we have different
21 definitions of "publish," Your Honor. We certainly were
22 intending to show them these select exhibits. So if, for
23 example, the exhibit is a picture of a victim then that
24 picture is up there on the screen. And likewise, if it's a
25 seven-second recording of the defendant's post-arrest

1 interview, we play it for the jury to see with synchronized
2 text.

3 (Interpretation.)

4 THE COURT: I think my definition of "publishing" is
5 a little bit more nuanced than yours. Whenever I think of the
6 term "publishing" it's something that's been admitted into
7 evidence and that you're giving the jury or the fact finder
8 the opportunity to evaluate at that particular time. That's
9 what I'm talking about.

10 MR. BLANCHARD: Okay.

11 (Interpretation.)

12 MR. BLANCHARD: So in that respect then, no, I don't
13 think there's a concern, Your Honor. We're not going to be --
14 I'm certainly not going to be vouching for this evidence and
15 we're not going to be asking the jury in opening to evaluate
16 it in any way, other than to just take it in as a preview of
17 the evidence to come during the trial.

18 (Interpretation.)

19 THE COURT: I think you understand the parameters
20 and my concern. The Court is going to allow you to use your
21 production process, whatever you want to call it, for your
22 presentation in opening statement, but I hope you understand
23 the limitations and the terminology that you're expected to
24 use as an officer of the Court as to the significance of this
25 information.

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1 In other words, that you're making it clear that
2 this is not evidence. I'm not expecting you to say that, but
3 that you not suggest, in any way, that this is evidence. You
4 can say something like, "this is evidence that we hope to
5 prove during the course of our presentation of our case," but
6 I don't want there to be any confusion that what you're
7 presenting in opening statement as the outline or summary of
8 your case is in any way considered evidence that's been
9 considered by the Court and it's admissible for their
10 consideration.

11 MR. BLANCHARD: Understood, Your Honor.

12 (Interpretation.)

13 THE COURT: Counsel, this is without prejudice to
14 you raising any objection as you think is appropriate if
15 Mr. Blanchard does go outside of what you think is the
16 appropriate parameters of the Court's determination.

17 (Interpretation.)

18 MR. TWIST: Thank you, Judge. But for the record we
19 would note our objection to this approach.

20 THE COURT: Yes, sir.

21 (Interpretation.)

22 THE COURT: Mr. Leiva.

23 MR. LEIVA: Your Honor -- yes, Your Honor, I
24 apologize. I thought that Your Honor would look to every team
25 to respond to some of the concerns that was raised by

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1 Mr. Twist.

2 THE COURT: We'll consider the motion for
3 reconsideration.

4 MR. LEIVA: Yes, Your Honor. I'm going to be a
5 little bit more specific, just to give the Court an example of
6 what the government proposed they are going to show the jury
7 during opening statement.

8 (Interpretation.)

9 MR. LEIVA: And I do appreciate Your Honor, and I
10 acknowledge the Court will instruct the jury, or the jury will
11 be told that opening statement is not evidence. But there are
12 instances, Your Honor, with certain things that are said in
13 opening -- or presented during opening statements are so
14 highly prejudicial, Your Honor. Especially at that stage
15 where it has yet to be determined whether that piece of
16 evidence would even be admissible, and I'll give the Court an
17 example.

18 (Interpretation.)

19 MR. LEIVA: The government is proposing showing the
20 video -- a video. It's several seconds long. It's a black
21 screen and you barely can hear voices in that video. And the
22 government is going to argue with an opening statement that
23 that is a video where the audio was captured of someone being
24 stabbed. You can't make out who is in the video.

25 (Interpretation.)

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1 THE COURT: First of all, I'm not going to let the
2 government argue anything in opening statement.

3 (Interpretation.)

4 MR. LEIVA: So with that particular video, again,
5 it's a black screen so you can't see what's going on. You can
6 barely make out any audio and then they are going to present
7 the jury with opening statement. My understanding is with a
8 transcript -- an interpretation of what their interpreter
9 believed what was said. So they are, in essence, creating
10 evidence, which they don't want to use during opening
11 statement, and that particular video, or its translation, may
12 not even come into evidence, Your Honor.

13 (Interpretation.)

14 MR. LEIVA: And that is one bell that once it's rung
15 it can't be unrung. Once the government says, "here is a
16 video and you hear someone being killed."

17 (Interpretation.)

18 MR. LEIVA: Now, here is the difference. If they
19 display the video, but they are taking the one extra step
20 which is "here is a video, and now here is the translation of
21 what we believe is being said during that small video clip
22 where you can't see any of the participants, and you can
23 barely make out what's being said."

24 THE COURT: Separate question.

25 (Interpretation.)

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1 MR. LEIVA: Yes, Your Honor. So that is the type of
2 highly prejudicial evidence that we are concerned about coming
3 in at opening statement.

4 (Interpretation.)

5 MR. LEIVA: Whereas, a piece of evidence on its face
6 you can't really make it out, what it is.

7 (Interpretation.)

8 MR. LEIVA: And for reference, that's Government's
9 Exhibit 41-4B and 41-4C.

10 (Interpretation.)

11 THE COURT: Which raises a separate issue of
12 credibility, reliability, and admissibility, which is a
13 separate thing from dealing with whether or not reference can
14 be made to a particular exhibit that may come into evidence in
15 opening statement.

16 (Interpretation.)

17 MR. LEIVA: Correct, Your Honor. But, again, it's
18 the reaction that a video that's played in opening statement
19 will, I have to assume, most lay people haven't heard
20 something like that, and it will draw a reaction early on in
21 the case, Your Honor. Where, again, they may have some
22 pictures or some stills that, on its face, the jury will be
23 able to see what it is, but in this one, again, they are going
24 to interpret for the jury what it is. And, again, in addition
25 to that, submit what they believe is being said on that short

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1 video where you can barely make out what the audio is. So
2 it's going to be a point of contention. They have other stuff
3 they can show, so I would just ask the Court to consider just
4 the prejudicial nature of that particular exhibit that they
5 want to introduce in opening statement, Your Honor, and ask
6 them to withhold that until the proper foundation can be laid.

7 (Interpretation.)

8 MR. LEIVA: Thank you, Your Honor.

9 THE COURT: The Court adheres to its previous
10 determination regarding the appropriateness of the proposed
11 opening statement by the government. The Court believes that
12 in most instances opening statements are very fluid and have
13 to be evaluated on their circumstances as they are presented.
14 I note your exception.

15 (Interpretation.)

16 THE COURT: Thank you, ma'am.

17 All right. I believe that's all the motions that I
18 have unless somebody has something else they want to bring up.

19 (Interpretation.)

20 THE COURT: Mr. Stambaugh.

21 MR. STAMBAUGH: Your Honor, just for the record,
22 I'm -- for Ronald Herrera Contreras, we would join the
23 objections that have already been made.

24 THE COURT: Yes, sir. And is that true for all
25 counsel?

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1 (Interpretation.)

2 MR. VANGELLOW: Yes, sir, Your Honor. On behalf of
3 Mr. Barrera.

4 (Interpretation.)

5 MS. RHODES: Yes, Your Honor, on behalf of
6 Mr. Ramirez Ferrera. And I would also ask that the Court
7 consider, or allow, our objections and motions of the
8 codefendants in a variety of issues that --

9 THE COURT: So you want to incorporate, by
10 reference, all of the objections made by all of the other
11 codefendants?

12 (Interpretation.)

13 THE COURT: Mr. Twist, same thing?

14 MS. RHODES: And also, Your Honor, we would adopt
15 the motions in limine as well.

16 THE COURT: Okay.

17 (Interpretation.)

18 MR. TWIST: Your Honor, we would join.

19 THE COURT: State your name, sir, and your client.

20 MR. TWIST: Russell Twist.

21 THE COURT: For?

22 MR. TWIST: Henry Zelaya Martinez, Your Honor.

23 THE COURT: Yes, sir. Thank you.

24 (Interpretation.)

25 MR. LEIVA: Yes, Your Honor. Manuel Leiva on behalf

1 of Elmer Zelaya Martinez. We also move to adopt.

2 Your Honor, I also had -- I guess the government had
3 filed a motion in limine to keep out my Rule 35 expert. Your
4 Honor did suggest, in passing, what the Court's position was
5 going to be on that. Just for the record, Your Honor, are you
6 making that ruling on the papers or do you want to hear
7 argument on it?

8 THE COURT: I can make -- I'm sorry.

9 (Interpretation.)

10 THE COURT: I can make that ruling on the papers. I
11 believe the Fourth Circuit is very clear in its perspective of
12 it. There's only one case that I think is out there. It was
13 a Second Circuit case which had very nuanced facts which
14 allowed that type of information to be provided. So I believe
15 the Fourth Circuit is consistent with what the government
16 suggested for the resolution of that particular motion.

17 (Interpretation.)

18 MR. LEIVA: Thank you, sir.

19 And one other thing, I think we all filed to be able
20 to bring in electronic equipment to trial. I was wondering if
21 we could get your Court's decision on that.

22 THE COURT: Everyone is going to be allowed to bring
23 things to allow them to present their case. Off the record.

24 (Discussion off the record.)

25 MR. LEIVA: Thank you, sir.

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1 THE COURT: My JA has handed the order up just now,
2 so the Court has entered the order. So you're good.

3 (Interpretation.)

4 MR. VANGELLOW: Paul Vangellow on behalf of Pablo
5 Barrera. We adopt and join the motions.

6 THE COURT: Yes, sir.

7 (Interpretation.)

8 THE COURT: Okay. I think that now takes us to
9 the -- I guess not, Mr. Blanchard is on his feet.

10 MR. BLANCHARD: Dangerous to get up before a judge.

11 Your Honor asked about other motions, and as far as
12 recently filed motions are concerned, I believe there's still
13 one outstanding, which is the government's motion in limine
14 regarding the questioning of government witnesses.

15 (Interpretation.)

16 THE COURT: Is that the one we got at 1 o'clock in
17 the morning?

18 MR. BLANCHARD: No. I believe that was the one
19 regarding the opening statement, Your Honor, but --

20 (Interpretation.)

21 MR. BLANCHARD: This motion concerns defense
22 questioning of witnesses regarding their location or
23 residence, and with respect to individuals who may be in the
24 witness security program, security measures relating to their
25 protected custody.

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1 (Interpretation.)

2 MR. BLANCHARD: I don't believe any objections have
3 thus far been filed.

4 THE COURT: I didn't see any.

5 (Interpretation.)

6 MR. BLANCHARD: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 (Interpretation.)

9 THE COURT: You need another break?

10 THE INTERPRETER: I'm good.

11 THE COURT: Okay, ma'am. I thank you for the job
12 that you're doing this morning -- or this afternoon. You've
13 been working hard. I appreciate you.

14 All right. Next, we're moving into the issue of
15 excusals. And I want to make clear -- and I appreciate
16 counsel's hard work on this.

17 (Interpretation.)

18 THE COURT: And as we all agree, jural excusal is
19 left in the discretion -- sound discretion of the trial court.

20 (Interpretation.)

21 THE COURT: As a subset of this opportunity for the
22 Court to excuse jurors --

23 (Interpretation.)

24 THE COURT: -- and the answers provided by members
25 of the venire.

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1 (Interpretation.)

2 THE COURT: -- a subset of exercise in this excusal
3 discretion --

4 (Interpretation.)

5 THE COURT: -- has allowed the Court to evaluate
6 some individuals who can be excused for cause.

7 (Interpretation.)

8 THE COURT: The Court has decided or discerned that
9 the responses from the potential venire --

10 (Interpretation.)

11 THE COURT: -- fall into five categories.

12 (Interpretation.)

13 THE COURT: Individuals who, all parties agree, meet
14 the standard to stay in the venire --

15 (Interpretation.)

16 THE COURT: Second, all parties agree that certain
17 individuals should be excused.

18 (Interpretation.)

19 THE COURT: The government's suggestions for strikes
20 for cause in the excusal process.

21 (Interpretation.)

22 THE COURT: In sum, for Mr. Zelaya Martinez
23 suggesting that they should be excused for cause.

24 (Interpretation.)

25 THE COURT: What the Court would like to do is

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1 identify, I believe, the 67 individuals. And we did have some
2 updates, so your numbers might not be quite like ours. We
3 were getting them this afternoon.

4 (Interpretation.)

5 THE COURT: We got some information at 2:30 this
6 afternoon --

7 (Interpretation.)

8 THE COURT: -- that juror number 295 --

9 (Interpretation.)

10 THE COURT: -- tested positive for COVID.

11 (Interpretation.)

12 THE COURT: So that juror will be excused, which
13 might not comport with what your current numbers are.

14 (Interpretation.)

15 THE COURT: At this point, the Court is going to
16 identify the, approximately, 67 potential jurors who the
17 parties have expressed no reservations about.

18 (Interpretation.)

19 THE COURT: And here they are in order.

20 (Interpretation.)

21 THE COURT: And I'm going to refer to these jurors
22 by number throughout the course of the litigation.

23 (Interpretation.)

24 THE COURT: No. 4, No. 5, No. 15, No. 17, No. 23,
25 No. 26, No. 44, No. 49, No. 56, No. 60, No. 66. Today we

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1 received something from No. 68 which didn't indicate any
2 concerns whatsoever.

3 (Interpretation.)

4 THE COURT: No. 80, No. 88, No. 89, No. 91, No. 101,
5 No. 102, No. 104, No. 108, No. 121. Today we received
6 information from No. 123, which also was consistent without
7 proposing any issues whatsoever.

8 (Interpretation.)

9 THE COURT: No. 125, No. 133, No. 136, No. 143,
10 No. 150, No. 151, No. 153, No. 156, No. 160, No. 163, No. 164,
11 No. 165, No. 168, No. 169, No. 174, No. 178, No. 180, No. 182,
12 No. 184, No. 186, No. 188, No. 189, No. 192.

13 (Interpretation.)

14 THE COURT: This is a little bit unusual, but I'm
15 going to tell you that I'm going to excuse this person anyway,
16 No. 205.

17 (Interpretation.)

18 THE COURT: And the reason why I'm excusing No. 205
19 is she expressed a reservation about anyone who had been
20 nominated by President Trump.

21 (Interpretation.)

22 THE COURT: We may have had some difficulty with
23 President Trump, but he did have some fine nominees. No. 212.

24 (Interpretation.)

25 THE COURT: No. 221.

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1 (Interpretation.)

2 THE COURT: No. 228.

3 (Interpretation.)

4 THE COURT: No. 237, No. 238, No. 239, No. 244,
5 No. 247, No. 248, No. 255, No. 262, No. 265, No. 266, No. 267,
6 No. 270, No. 271, No. 279, No. 283, No. 291.

7 (Interpretation.)

8 THE COURT: No. 293 and No. 300.

9 All right. We just got another one. No. 220.

10 (Interpretation.)

11 THE COURT: All right. That gives us approximately
12 67 or 68 people that can participate in the venire.
13 Mr. Zelaya requested that ten others be excused. And the
14 government requested that 15 others be excused. What I'm
15 inclined to do, Counsel -- I want you to listen closely to
16 this as I say this. Is to excuse all of those that Mr. Zelaya
17 requested to be excused and all of those that the government
18 requested to be excused.

19 (Interpretation.)

20 THE COURT: There were -- out of the 300 that we
21 sent out, there were approximately 104 that all requested to
22 be excused.

23 (Interpretation.)

24 THE COURT: The Court is going to excuse all 104 of
25 those -- or approximately 104.

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1 (Interpretation.)

2 THE COURT: There was a lesser category of
3 individuals who the Court chose to excuse --

4 (Interpretation.)

5 THE COURT: -- based upon certain answers provided
6 in the questionnaires.

7 (Interpretation.)

8 THE COURT: The Court proposes that we work with the
9 67 that the Court previously articulated as our venire.

10 (Interpretation.)

11 THE COURT: Does any counsel have any objection to
12 that?

13 MS. BELLOWS: I'm fine, Your Honor, but I believe
14 that leaves us with -- if everyone exercises their strikes,
15 because I believe the Court gave the defense 30 and the
16 government 18.

17 THE COURT: 10 and 6.

18 MS. BELLOWS: What was that?

19 THE COURT: 10 and 6.

20 (Interpretation.)

21 THE COURT: As I understand, Ms. Bellows -- oh, I'm
22 sorry.

23 (Interpretation.)

24 THE COURT: As I understand it, and correct me if
25 I'm wrong, and I missed something, no one has requested

1 additional strikes.

2 (Interpretation.)

3 MS. BELLOWS: Your Honor, actually there were
4 motions on this, and it was a long time ago. So in February
5 of -- February 24th of 2020, so over two years ago, the Court
6 granted the defense motion to enlarge the number of peremptory
7 strikes and granted the government 18 strikes and the
8 defendant, collectively, 30 strikes.

9 (Interpretation.)

10 THE COURT: Okay.

11 (Interpretation.)

12 THE COURT: So theoretically --

13 (Interpretation.)

14 THE COURT: So if everyone exercises every
15 peremptory strike that they have, we're at 48. 30 plus 18,
16 correct?

17 MS. BELLOWS: Correct.

18 (Interpretation.)

19 THE COURT: So we would have to then lose 19 for
20 cause?

21 (Interpretation.)

22 MS. BELLOWS: No. I think that that would leave us
23 with -- yeah, that would leave us with 19 to pick the jury and
24 the alternates, and I didn't know how many alternates the
25 Court was going to --

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1 THE COURT: I was looking at -- I'm sorry.

2 (Interpretation.)

3 THE COURT: I was thinking about 16.

4 (Interpretation.)

5 MS. BELLOWS: Total?

6 THE COURT: Total, yes.

7 (Interpretation.)

8 MS. BELLOWS: Okay. I think that will be fine with
9 the government, Your Honor.

10 THE COURT: And Ms. Bellows -- and again, I don't
11 know what people are going to do in the context of exercising
12 their strikes, but it's been my experience that many times the
13 government doesn't exercise anywhere near the number of
14 strikes they're entitled to, and sometimes the defense doesn't
15 exercise strikes either.

16 MS. BELLOWS: Right.

17 (Interpretation.)

18 MS. BELLOWS: I agree, Your Honor. And I do just
19 want to make sure that this Court does not allow back
20 striking.

21 THE COURT: No, no back striking.

22 (Interpretation.)

23 MR. VANGELLOW: Thank you, Your Honor. If I
24 understood you correctly, you've identified a lesser group.
25 Would that be a backup group for --

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1 THE COURT: It is a lesser group. And when I say a
2 "lesser group," there are people that don't -- are not as
3 sterile, for lack of a better way of putting it, as others.
4 Some just don't want to be here. One person had a -- was it a
5 gentleman, his wife is going to have a baby on July the 28th.
6 I hope we're not doing this on July 28th. But again, I'm just
7 trying to anticipate any problem that we may have. And
8 getting rid of those people who are in that sort of void, for
9 lack of a better way of putting it.

10 MR. VANGELLOW: So they're out of the mix then?

11 THE COURT: Out of the mix, yes.

12 MR. VANGELLOW: Okay. Thank you.

13 THE COURT: Thank you.

14 Is there --

15 (Interpretation.)

16 THE COURT: Does any counsel for any of the
17 defendants have any problem with us summoning the 67 or so
18 that I previously articulated?

19 (Interpretation.)

20 MR. VANGELLOW: Not on behalf of Mr. Barrera, Your
21 Honor.

22 (Interpretation.)

23 MR. TWIST: Russell Twist, Your Honor. Not on
24 behalf of Mr. Zelaya Martinez.

25 (Interpretation.)

1 THE COURT: Okay. Thank you.

2 MR. STAMBAUGH: For Mr. Herrera, we don't object.

3 THE COURT: Thank you, sir.

4 (Interpretation.)

5 MR. LEIVA: No objection for Elmer Zelaya Martinez,
6 Your Honor.

7 THE COURT: Thank you, Mr. Leiva.

8 (Interpretation.)

9 THE COURT: Anybody else?

10 MS. RHODES: No objection, Your Honor, for
11 Mr. Ramirez. And I do have a question about procedures for
12 next week.

13 THE COURT: All right. Let me --

14 (Interpretation.)

15 THE COURT: Let me finish cleaning this up before we
16 move onto something else. Okay?

17 (Interpretation.)

18 Counsel, what we're going to do is the -- I believe
19 the number is 67. The 67 people that I identified on the
20 record, we'll send an order so you'll be able to reference who
21 we're talking about as far as those 67 are concerned.

22 (Interpretation.)

23 MS. RHODES: I want to know what the procedure is
24 going to be as far as the jurors being brought in and any
25 further questions.

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1 (Interpretation.)

2 THE COURT: Well, the Court sent out a voir dire
3 that the Court was going to conduct months ago. Counsel had
4 an opportunity to comment. So the Court will conduct the voir
5 dire. If there are any -- I'm sorry.

6 (Interpretation.)

7 THE COURT: If there is any follow-up that needs to
8 be done, we can conduct that in due course.

9 (Interpretation.)

10 THE COURT: I will tell you that the use of this
11 questionnaire has streamlined the process considerably.

12 (Interpretation.)

13 THE COURT: During the height of the pandemic, which
14 I actually was able to conduct two or three jury trials, we
15 were able to get voir dire done by mid-afternoon.

16 (Interpretation.)

17 THE COURT: That was doing it in two groups.

18 (Interpretation.)

19 THE COURT: We have done some configuring here in
20 the courtroom and figured out, what it looks like --

21 (Interpretation.)

22 THE COURT: -- we will be able to see all members of
23 the venire --

24 (Interpretation.)

25 THE COURT: -- in the gallery. So we can do them

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1 all at one time. Obviously, things are subject to change if
2 we have another spike with the pandemic and if the general
3 orders change.

4 (Interpretation.)

5 THE COURT: We will have the jury actually in the
6 box. That is what we are proposing to do.

7 (Interpretation.)

8 THE COURT: And just so you all can manage your
9 schedules, there are a couple of variables that I need to talk
10 about.

11 (Interpretation.)

12 THE COURT: Let me address my variables before
13 you -- go ahead.

14 (Interpretation.)

15 MR. LEIVA: Your Honor, it sounds like we're going
16 to be here for a little longer. My client, for the last 20
17 minutes, has told me he needs to take a break and use the
18 restroom, and I think he's at that point where --

19 THE COURT: Okay.

20 The marshals -- is there a facility right there?

21 THE MARSHALS: Yes, Your Honor.

22 THE COURT: Okay. We will not empty the courtroom.
23 We will just allow Mr. Zelaya Martinez to be able to use the
24 facilities.

25 MR. LEIVA: Thank you, Your Honor. I kept telling

1 him that we were close, but --

2 THE COURT: We're close, but we'll provide an
3 accommodation.

4 (Interpretation.)

5 (A pause in the proceedings.)

6 THE COURT: Let the record reflect that Mr. Zelaya
7 Martinez is back in the courtroom after the accommodation.

8 (Interpretation.)

9 THE COURT: All right. Counsel, for your
10 information, we are, obviously, going to start May 9th, this
11 Monday. I have just gotten information from Judge O'Grady's
12 courtroom --

13 (Interpretation.)

14 THE COURT: -- that closing arguments in the case
15 upstairs started at 1:30.

16 (Interpretation.)

17 THE COURT: The government has requested two hours
18 for closing arguments in their case.

19 (Interpretation.)

20 THE COURT: So they should be rounding it up here
21 soon. I don't know how long the defendants are going to
22 require for their closing.

23 (Interpretation.)

24 THE COURT: So that case should, reasonably, be
25 before the jury some time tomorrow.

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1 (Interpretation.)

2 THE COURT: So there's a very good chance that all
3 lawyers associated with this matter will be available on
4 Monday.

5 (Interpretation.)

6 THE COURT: If by chance the case is not resolved on
7 Monday, we will --

8 (Interpretation.)

9 THE COURT: -- we will start on May 11. That's
10 Wednesday. And whether it's May 9th or May 11th, the start
11 time will be 9 o'clock.

12 (Interpretation.)

13 THE COURT: The Court will take a recess from May
14 26th through the Memorial Day holiday.

15 (Interpretation.)

16 THE COURT: And we will resume the day after the
17 Memorial Day holiday.

18 (Interpretation.)

19 THE COURT: The plan will be, with a little bit of
20 latitude --

21 (Interpretation.)

22 THE COURT: -- for us to conclude our days somewhere
23 around 4 o'clock.

24 (Interpretation.)

25 THE COURT: And as I've stated before, the reason

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1 for that is that some members of the jury have childcare and
2 daycare responsibilities --

3 (Interpretation.)

4 THE COURT: -- that expire around 6 o'clock.

5 (Interpretation.)

6 THE COURT: There will be periodic breaks in the
7 schedule to allow, particularly defense counsel --

8 (Interpretation.)

9 THE COURT: -- to take care of other matters that
10 they may have before various courts in the Commonwealth.

11 (Interpretation.)

12 THE COURT: For seating requirements, the Court
13 respectfully requests --

14 (Interpretation.)

15 THE COURT: -- and to allow all defendants to be in
16 the well of the courtroom, that only one lawyer be sitting
17 right beside the defendant, but the Court will give you leeway
18 to consult with your co-counsel. Quite frankly, there's just
19 not enough room to get 15 lawyers in the well.

20 (Interpretation.)

21 THE COURT: The way we're going to do examinations
22 is we're going to do a reverse draft. For those of you who
23 know sports will understand this. If you're questioning first
24 with a witness, you're second, then you're third, then you're
25 fourth, and then your fifth. So two becomes three, three

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1 becomes four, four becomes five. The reason why we're doing
2 that is because I want to allow all counsel to have the
3 benefit of asking questions either first or last. So there's
4 going to be a rotational process.

5 Ms. Armentrout is going to keep track of it to make
6 sure that you know when it's your turn. Obviously, there's
7 going to be some -- yes, ma'am.

8 (Interpretation.)

9 MS. RHODES: Your Honor, all defense agree that we
10 prefer one person to take the lead on a particular witness.
11 Would that be accommodated?

12 (Interpretation.)

13 THE COURT: That process works if everyone agrees
14 all the time. And unless you can assure me or guarantee me
15 that that's going to work all the time, I would prefer to stay
16 with my process.

17 (Interpretation.)

18 MS. RHODES: Very well.

19 (Interpretation.)

20 THE COURT: All right. Thank you, Counsel, for your
21 work on this as we perfect this matter for trial. As I've
22 said at the beginning, we can only make this work if we're all
23 pointed in the right direction. Okay. So we have to make
24 sure that we're working together to make this thing work for
25 everybody and that everybody has a fair opportunity to

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1 represent their interest in the case.

2 Again, we will start on May 9th at 9 o'clock. I'm
3 giving the jurors off on May 10th, because, due to the length
4 of this trial, I want them to be able to tell their bosses and
5 the like that they're going to be out of pocket for six weeks.
6 I think that's only fair to them. So we will not have court
7 under any circumstances on May 10th.

8 What I will suggest, from the lawyers' standpoint,
9 depending on how well voir dire goes, be prepared, obviously,
10 for voir dire and potentially opening statements. Don't worry
11 about any witnesses for the first day that we start. Okay.

12 (Interpretation.)

13 MR. VANGELLOW: Paul Vangellow on behalf of
14 Mr. Barrera. There are some open items, Judge, and with
15 regard to when to address those. They're not necessarily
16 reducible right at the moment to a motion in limine, but if
17 those -- honestly there's a handful of items. I know the
18 government has raised the issue of whether or not we --

19 (Interpretation.)

20 MR. VANGELLOW: There have been notices filed with
21 respect to RICO evidence, opposing notices regarding the same.
22 I know --

23 (Interpretation.)

24 MR. VANGELLOW: -- there's been an issue raised with
25 respect to reference on cross-examination to polygraph

1 examination.

2 (Interpretation.)

3 THE COURT: Let me tell you this --

4 (Interpretation.)

5 THE COURT: Mr. Vangellow, let me tell you this,
6 we're going to do a triage of the file because things come in
7 all the time. We're trying, as best we can, to keep up with
8 the things that are filed. So what we're going to do, over
9 the next couple of days, is triage the entire case file and
10 figure out what we need to provide a ruling on.

11 (Interpretation.)

12 MR. VANGELLOW: Very well. Your Honor, there is one
13 critical issue, not only with respect to my client, but with
14 respect to the other defendants as well. And it relates to
15 the very clear parameters of your order respecting certain
16 evidence of the decedents in this case, and hopefully not
17 incur in this Court's wrath, but it's important for my client
18 to understand exactly the scope of your ruling with respect to
19 what we would submit to the Court is evidence of, for example,
20 Sergio Triminio's status as a coconspirator in the events that
21 led to the death of Edvin Mendez.

22 Also, evidence that he engaged in two different
23 conspiracies to commit murder. I think those are --
24 understanding -- if I do understand correctly the scope of
25 your order that addressed those preliminarily in the context

1 of either Rule 404(b) or 404 evidence generally. The
2 government has raised a couple of notices saying that they're
3 -- I'm sorry --

4 (Interpretation.)

5 MR. VANGELLOW: I'm more than happy to wait for the
6 Court's triage, as you expressed it, and see whether it
7 addresses some of these open items or I can raise them.

8 THE COURT: Let's --

9 (Interpretation.)

10 THE COURT: Let us do our triage as best we can.
11 Every time we think we're caught up with everything that's
12 been filed somebody files something else. As you can tell, we
13 do a lot of research to make sure that we can get these
14 matters resolved as proficiently and correctly as possible.
15 So we're working hard over here.

16 MR. VANGELLOW: I know you are, Judge.

17 (Interpretation.)

18 MR. VANGELLOW: Can I add -- I'm sorry, can I assume
19 that exceptions will be noted automatically?

20 THE COURT: Anything that the Court -- I'm sorry.

21 (Interpretation.)

22 THE COURT: Anything that the Court rules against,
23 either your clients or the government, particularly in your
24 case, the exception is noted. As I understand the case law,
25 you don't have to note exceptions anymore. You just have to

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1 make sure that when the matter comes up, you preserve your
2 objection. I think that's the way we're doing things now.

3 (Interpretation.)

4 MR. VANGELLOW: And finally, Judge, I think the case
5 is recently where opposing counsel has noted an objection
6 without giving a basis for it and by the time that counsel
7 walked up to the bench to get it resolved, perhaps, they came
8 up with a reason for it. I don't know how this Court works in
9 terms of noting objections and the grounds for objections at
10 the time it is made.

11 THE COURT: And the Court -- I'm sorry.

12 (Interpretation.)

13 THE COURT: In the Court's view, there are 13
14 general objections which resolve pretty much anything that is
15 deemed in controversy. Obviously --

16 (Interpretation.)

17 THE COURT: Obviously, if you want to propose a
18 Federal Rules of Evidence objection, which is more particular,
19 the Court expects that they not be speaking objections, that
20 the basis for the objection is cited, the rule is cited, and
21 then let the Court resolve what needs to be resolved.

22 MR. VANGELLOW: Thank you, Your Honor.

23 (Interpretation.)

24 THE COURT: And finally, each one of the defendants
25 has either two or three lawyers, and the rule that this Court

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1 is going to impose is that the lawyer responsible for the
2 examination is the lawyer that is in the position to make the
3 objection. So, in other words, I don't want any team
4 objections. Whomever is responsible for the witness is
5 responsible for the objection. Obviously, I'm not going to
6 get in the way of you consulting with your counsel or your
7 co-counsel, but one person responsible for the witness is the
8 person who needs to be objecting. Same thing on the
9 government's side.

10 (Interpretation.)

11 THE COURT: And the signal for wanting to make sure
12 that there's nothing else to be resolved with your co-counsel,
13 if you could simply say "Court's indulgence," you'll get that
14 all the time.

15 (Interpretation.)

16 MR. TWIST: Russell Twist, Your Honor. In regard to
17 clothing for the defendants, how does this Court want us to
18 proceed to get clothing to the --

19 THE COURT: Work with the United States Marshals
20 Service.

21 (Interpretation.)

22 THE COURT: And I would suggest that you probably
23 want to bring in any clothing that you want for your clients
24 to wear no later than Friday. In other words, try not to
25 bring them in Monday morning.

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1 (Interpretation.)

2 THE COURT: Yes, Ms. Rhodes. Go ahead.

3 MS. RHODES: In light of the fact that Mr. Brodnax
4 and counsel is still in trial today, and maybe part of
5 tomorrow at least, I would ask that we be able to start
6 openings on Wednesday morning. I have not had a chance to
7 even speak with Mr. Brodnax or Easley. So I think that will
8 be very helpful.

9 (Interpretation.)

10 THE COURT: I appreciate your concern, ma'am, but I
11 believe this Court has granted a whole lot of accommodation to
12 everything else that's going on in this courthouse so we're
13 going to stick to our schedule.

14 (Interpretation.)

15 THE COURT: All right.

16 MS. BELLOWS: Your Honor, just two things. The
17 first is, I think as the Court is aware, in the past I've
18 prepared a spreadsheet that I've sent to defense counsel with
19 what I thought were pending motions and resolved motions. I
20 only see a couple that I believe are pending and I was
21 wondering if the Court would like for us to -- for the
22 government to send it to the defense and see if there's
23 anything else to add and then when we're done with that send
24 it to chambers.

25 THE COURT: Mr. Golden, yes.

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1 (Interpretation.)

2 THE COURT: That is acceptable. Thank you.

3 MS. BELLOWS: Thank you, Your Honor. And then the
4 second thing is, as the Court is aware under the scheduling
5 order, there were certain requirements the government had to
6 file Jencks, and Bruton, and produce disclosures. And all of
7 that. Yesterday was the deadline for -- sorry.

8 (Interpretation.)

9 THE COURT: She lost you at "Jencks."

10 MS. BELLOWS: Okay. That pursuant to the Court's
11 scheduling order, we have had a lot of deadlines for the
12 government to produce Jencks. That's J-e-n-c-k-s. And
13 Giglio, G-i-g-i- -- oh, no, I said Bruton. Sorry. But also
14 Giglio, G-i-g-l-i-o and Bruton materials.

15 (Interpretation.)

16 MS. BELLOWS: Yesterday was the deadline for the
17 defense to produce Rule 26.2 statements. And I -- no one in
18 the government received any such statements. And I just want
19 to confirm with the parties here and before the Court that
20 there are no such statements as opposed to that that deadline
21 was just forgotten.

22 (Interpretation.)

23 THE COURT: Mr. Leiva, any 26.2 materials?

24 MR. LEIVA: No, Your Honor.

25 THE COURT: Mr. Stambaugh?

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1 MR. STAMBAUGH: No, Your Honor.

2 MR. VANGELLOW: No, Your Honor.

3 (Interpretation.)

4 MR. TWIST: No, Your Honor.

5 MS. RHODES: No, Your Honor.

6 (Interpretation.)

7 THE COURT: Very good. The record is clean.

8 All right. Counsel, thank you for your
9 participation today.

10 Let me go around the room.

11 MR. STAMBAUGH: One housekeeping -- do you know when
12 the determination will be made whether or not it's going to be
13 the 9th or the 11th in terms of the start.

14 (Interpretation.)

15 THE COURT: That's one thing I --

16 (Interpretation.)

17 THE COURT: That's one thing that I don't have any
18 control over. That's Judge O'Grady. But I will tell you
19 this, Judge O'Grady and I talk on the phone more than we need
20 to about how we can both conduct our trials proficiently and
21 efficiently.

22 (Interpretation.)

23 THE COURT: And the courthouse is a gossip chamber,
24 and I'm sure when that case resolves, everybody will know.

25 (Interpretation.)

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1 THE COURT: Mr. Contreras? Present?

2 DEFENDANT CONTRERAS: Yes.

3 THE COURT: Okay. Your lawyer is present. Mr.

4 Stambaugh did a good job.

5 Mr. Martinez, are you satisfied with the services of
6 your counsel? Mr. Elmer Zelaya Martinez.

7 DEFENDANT E. MARTINEZ: Yes, sir.

8 THE COURT: Thank you, sir.

9 Mr. Henry Zelaya Martinez, are you satisfied with
10 the services of your lawyer?

11 DEFENDANT H. MARTINEZ: Yes.

12 THE COURT: Mr. Pablo Miguel Velasco Barrera, are
13 you satisfied with the services of your lawyer?

14 DEFENDANT BARRERA: Yes.

15 THE COURT: Thank you, sir.

16 Mr. Douglas Ramirez Ferrera, are you satisfied with
17 the services of your counsel?

18 DEFENDANT FERRERA: Yes.

19 THE COURT: Very good. Thank you, gentlemen. We'll
20 see you on Monday morning, 9 o'clock.

21

22 **(Proceedings adjourned at 3:34 p.m.)**

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24

25

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Jury Pretrial Motions in the case of the **UNITED STATES OF AMERICA versus RONALD HERRERA CONTRERAS**, et al. Criminal Action No.: 1:18-cr-123, in said court on the 4th day of May, 2022.

I further certify that the foregoing 72 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this May 18, 2023.



Tonia M. Harris, RPR
Official Court Reporter